

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	John F. Grady	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	04 C 591	DATE	April 27, 2004
CASE TITLE	Porter v. Allstate Insurance Co.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

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DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> General Rule 21 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Plaintiff's application to proceed <u>in forma pauperis</u> is granted. Plaintiff's motion for appointment of counsel is denied without prejudice. Count I of the complaint is dismissed without prejudice. ENTER MEMORANDUM OPINION.
(11)	x	[For further detail see order (on reverse side of/attached to) the original minute order.]

<input type="checkbox"/> No notices required, advised in open court. <input type="checkbox"/> No notices required. <input checked="" type="checkbox"/> Notices MAILED by judge's staff. <input type="checkbox"/> Notified counsel by telephone. <input type="checkbox"/> Docketing to mail notices. <input type="checkbox"/> Mail AO 450 form. <input type="checkbox"/> Copy to _____	courtroom deputy's initials KAM	U.S. DISTRICT COURT NORTHERN DISTRICT OF ILLINOIS APR 28 2004	number of notices	Document Number 6
			APR 28 2004 date docketed	
			JFG docketing deputy initials	
			date mailed notice	
			KAM mailing deputy initials	
Date/time received in central Clerk's Office				

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIRGIE PORTER,)
)
Plaintiff,)
)
v.) No. 04 C 591
)
ALLSTATE INSURANCE COMPANY,)
)
Defendant.)

DOCKETED
APR 28 2004

MEMORANDUM OPINION

Plaintiff Virgie Porter, proceeding pro se, has filed a complaint against Allstate Insurance Company ("Allstate"). Plaintiff petitions for leave to file in forma pauperis and requests appointment of counsel. For the reasons explained below, the application to proceed in forma pauperis is granted, and the motion for appointment of counsel is denied.

I. In Forma Pauperis

The federal in forma pauperis statute, 28 U.S.C. § 1915, is designed to ensure that indigent litigants have meaningful access to the courts. See Neitzke v. Williams, 490 U.S. 319, 324 (1989). However, to prevent abuse of the broad access permitted by the statute, § 1915(e) provides that "the court shall dismiss the case" if it finds that the allegation of poverty is untrue or if it determines that the action is (1) frivolous or malicious; (2) fails to state a claim on which relief may be granted; or (3) seeks

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damages from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). As for the "failure to state a claim" factor, we will apply the familiar Rule 12(b)(6) criterion that dismissal is in order if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Because Porter is proceeding pro se, we have a special responsibility to construe her complaint liberally. See Donald v. Cook County Sheriff's Dep't, 95 F.3d 548, 555 (7th Cir. 1996).

Porter states in her financial affidavit that she is unemployed and has no source of income except unspecified loans from family and friends. She also states that she does not have more than \$200 in cash or in bank accounts. Given this information, it appears that Porter is unable to pay the necessary filing fees.

The Civil Cover Sheet filed with Porter's complaint indicates that this is a federal question suit, but plaintiff does not cite the federal statute under which she is filing this action. The complaint contains two counts against Allstate in relation to plaintiff's property insurance. Count I states "Discriminated by sex. Male customer with same similar [sic] property, pol. coverage was treated better than me. Believe to have been treated badly + worse than that of male customer." (Complaint at 3.) This count fails to state a claim because plaintiff does not specify exactly how she was allegedly "treated badly" by Allstate. If it is in

relation to the insurance rates she was charged, that is covered by Count II, which alleges "price gouging [sic]. I, female customer, was retaliated against, because I am female comparing male customer." (Complaint at 3.) Construing the complaint liberally, Count II states a claim for violation of the Fair Housing Act, which prohibits discrimination "in the provision of services or facilities in connection" with the sale or rental of housing and activities that "make unavailable or deny" housing "because of . . . sex." 42 U.S.C. § 3604(a), (b).¹

Because it appears that plaintiff cannot pay the required filing fees and because the complaint states a claim in Count II, we grant plaintiff's application to proceed in forma pauperis. Count I, however, is dismissed for failure to state a claim because plaintiff does not specify the exact allegedly discriminatory actions of the defendant. If plaintiff wishes, we will consider granting her leave to file an amended complaint to cure the defects in Count I, but only after the defendant has been served and counsel has entered an appearance on behalf of defendant.

¹ 42 U.S.C. § 3613 provides a private right of action for alleged discriminatory housing practices in violation of § 3604. The regulations interpreting § 3604 provide that "[i]t shall be unlawful, because of . . . sex . . . to engage in any conduct relating to the provision of housing or of services and facilities in connection therewith that otherwise makes unavailable or denies dwellings to persons. . . . [P]rohibited activities include . . . refusing to provide . . . property or hazard insurance for dwellings or providing such services or insurance differently because of . . . sex" 24 C.F.R. § 100.70(b), (d)(4). Courts have construed the anti-discrimination sections of the Fair Housing Act to apply to the provision of homeowners insurance. See, e.g., National Fair Housing Alliance, Inc. v. Prudential Ins. Co. of Am., 208 F. Supp. 2d 46, 56-57 (D.D.C. July 9, 2002).

II. Appointment of Counsel

Civil litigants have no constitutional or statutory right to be represented by counsel in federal court. See McKeever v. Israel, 689 F.2d 1315 (7th Cir. 1982). District courts may, in their discretion, appoint counsel pursuant to 28 U.S.C. § 1915(e)(1). In evaluating a litigant's request for counsel, there is a threshold requirement that the indigent make a reasonable effort to secure counsel before presenting a request for appointment. Jackson v. County of McLean, 953 F.2d 1070, 1072 (7th Cir. 1992).² The Seventh Circuit has phrased the issue in terms of a single question: Given the difficulty of the case, does the plaintiff appear competent to try the case himself, and if not, would appointment of counsel make any difference to the outcome? See Farmer v. Haas, 990 F.2d 319, 322 (7th Cir. 1993).

At this stage of the proceedings, when defendant has not yet had an opportunity to respond to the complaint, we cannot say that the appointment of counsel at this time would aid plaintiff's cause. Plaintiff's motion for appointment of counsel is therefore denied without prejudice to reconsideration should it become apparent that the assistance of an attorney is necessary.

^{2/} In her motion for appointment of counsel, plaintiff indicates that she has made reasonable attempts to secure counsel before bringing the motion.

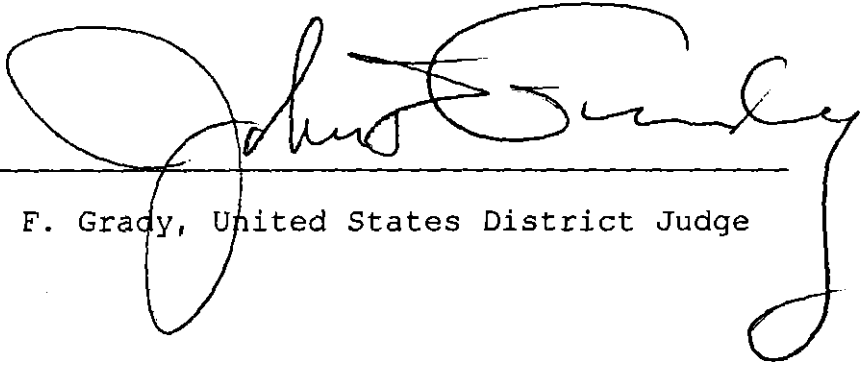
CONCLUSION

For the reasons stated above, plaintiff's application to proceed in forma pauperis is granted. Plaintiff's motion for appointment of counsel is denied without prejudice.

Count I of the complaint is dismissed without prejudice.

DATE: April 27, 2004

ENTER:



John F. Grady, United States District Judge